

THE HONORABLE JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SCOTT AND KATHRYN KASEBURG, *et al*,

Plaintiffs,

v.

PORT OF SEATTLE, a municipal corporation; PUGET SOUND ENERGY, INC., a Washington for profit corporation and KING COUNTY, a home rule charter county, and CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a municipal corporation,

Defendants.

NO. 14-cv-00784-JCC

JOINT STATUS REPORT

Pursuant to this Court's Minute Order of March 16, 2016 (Dkt. #162), the parties provide their positions as to whether undecided issues remain in the case:

Plaintiffs' Position

Plaintiffs believe that there are outstanding issues in this case despite this Court's rulings thus far. Specifically, and by way of example, Plaintiffs' claims for quiet title still remain and several Defendants also have counterclaims for quiet title. In addition, other corollary issues remain within all of the quiet title claims relative to the Kittinger deed, as opposed to the Lake

1 Washington Belt Line deed and the State of Washington condemnation, and who owns the fee in
 2 the corridor if the Plaintiffs do not. The Defendants agree that two of the three source
 3 conveyances to the railroad only conveyed an easement. King County's position is that the
 4 Kittinger source conveyance conveyed fee title to the railroad. Plaintiffs disagree and believe
 5 that all three source conveyances only conveyed an easement to the railroad and that Plaintiffs
 6 own the underlying fee title in the former railroad corridor. In addition, Plaintiffs are willing to
 7 attempt to pursue an interlocutory appeal at this time, if the Defendants and the Court agree,
 8 which would necessarily require a stay of the quiet title claims for all parties, but the Defendants
 9 have not agreed to pursue that alternative path.

10 **Defendants' Positions**

11 Puget Sound Energy, Inc. Plaintiffs do not allege that PSE has claimed any fee interest
 12 in the corridor. Instead, Plaintiffs claim that PSE's utility easement has clouded Plaintiffs'
 13 alleged fee ownership interests in the corridor and sought to invalidate PSE's utility
 14 easement. (*See* Dkt. #83 at pp. 47-50.) In turn, PSE filed a quiet title counterclaim to establish
 15 the validity of its utility easement within the corridor: "Pursuant to the South Rail Line
 16 Easement, PSE holds a valid and enforceable easement, over, along, above, and below the BNSF
 17 rail corridor." (Dkt. #86 at p. 10.) In other words, the dispute between Plaintiffs and PSE is
 18 limited to the validity of PSE's utility easement.

19 PSE moved for summary judgment, arguing that "PSE's utility easement is valid and
 20 enforceable, and title should be quieted in PSE's favor as a matter of law." (Dkt. #143 at
 21 p. 1.) For purposes of that motion, PSE assumed—without conceding—that the plaintiffs were
 22 the fee owners of the corridor and argued that PSE's utility easement was a permissible
 23 incidental use of the preserved railroad easements. (*Id.* at pp. 4-5.) The Court granted PSE's
 24 motion, which resolves all claims between Plaintiffs and PSE.

25 If the plaintiffs do not own the corridor in fee, *additional* grounds would exist upon
 which any reviewing court could affirm the Court's order granting summary judgment to

1 PSE. Accordingly, PSE submits that an interlocutory appeal would be an inefficient use of
2 judicial resources.

3 Port of Seattle. The Port of Seattle brought no counter- or cross-claims and believes
4 there are no remaining issues pertaining to it. The Port may seek dismissal by way of an agreed
5 dismissal order or motion.

6 King County. Plaintiffs and King County have outstanding quiet title claims against
7 each other, which require application of the Court's existing rulings, related doctrines, and final
8 adjudication of the Kittinger deed. Although factual issues precluded a grant of summary
9 judgment for plaintiffs on the Kittinger deed, the County believes that no factual disputes
10 preclude summary judgment in the County's favor. Based on recently obtained discovery, the
11 County is also closely examining plaintiffs' Article III standing due to application of
12 Washington's centerline presumption and Kittinger deed issues. The County believes that all
13 remaining issues can be determined through a final summary judgment motion, which is
14 imminent. Because plaintiffs have expressed a plan to appeal the Court's existing rulings,
15 resolution of the standing issue is particularly important to continued proceedings in this matter.

16 Sound Transit. The Court has already ruled that light rail use on, above, and below
17 ground is consistent with the preserved BNSF easements. *See* Dkt No. 142 (Order Granting
18 Sound Transit's Motion for Partial Summary Judgment). The only relief remaining for Sound
19 Transit is for the Court to affirmatively quiet title in Sound Transit's favor stating that consistent
20 with the Court's prior rulings Sound Transit may construct and operate light rail pursuant to its
21 High Capacity Transportation Easement, which plaintiffs acknowledge Sound Transit obtained
22 as part of the multi-party transaction – *see, e.g.*, Dkt. No. 81-1 (3rd Amended Complaint, ¶ 118).
23 Sound Transit will file a summary judgment motion seeking this relief if the parties cannot
24 otherwise agree to a stipulation to that effect.
25

DATED this 28th day of March, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 28th day of March, 2016.

s/ Lynn Van Eyck